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| 10/594,962 | 09/29/2006 | Tomoki Todo | 042715-5023 | 6716 |
| 9629 7590 11/25/2009 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004 | | | | |
| EXAMINER | | | | |
| HAMA, JOANNE | | | | |
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| 1632 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Applicant filed a response to the Final Action of June 18, 2009 on November 17, 2009.

With regard to the amendment to the claims, November 17, 2009, Applicant is reminded that all claims in amendments be given the proper status identifier or risk non-entry of amendments (see 37 CFR 1.121). It is noted that claim 1 has been amended, but its status has been indicated as "previously presented". The appropriate status of claim 1 is "currently amended".

The amendment to the claims, November 17, 2009, will not be entered because Applicant has added a new limitation to the claims which requires a new search and consideration. Further, Applicant has added new claims, 21, 22, which require a new search and consideration.

Because the claims have not been entered, Applicant's response will be applied to the claims filed December 15, 2008.

Maintained Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Chiocca et al., US Patent Application Publication US 2002/0110543 A1, published

August 15, 2002, previously cited, in view of Breakefield et al., US Patent, 6,573,090, patented June 3, 2003, Saeki et al., 2001, Molecular Therapy, 3: 591-60, Buchholz et al., 2001, Nature Biotechnology, 19: 1047-1052, previously cited, Krisky et al., 1998, Gene Therapy, 5: 1517-1530, previously cited, Todo et al., 2001, Cancer Research 61: 153-161, Bennett et al., 2001, Annals of Surgery, 233: 819-826, for reasons of record July 28, 2008, June 18, 2009.

Applicant's arguments filed November 17, 2009 have been fully considered but they are not persuasive.

Applicant indicates that the claims have been amended such that the genetic construct is greater than 150kb (Applicant's response, page 6). In response, this is not persuasive as the amendment to the claims has not been entered.

Thus, the claims remain rejected.

Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Hama, Ph.D. whose telephone number is 571-272-2911. The examiner can normally be reached Mondays, Tuesdays, Thursdays, and Fridays from 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Paras, can be reached on 571-272-4517. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

/Joanne Hama/
Primary Examiner
Art Unit 1632